

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE CITY OF SOUTH PORTLAND, MAINE

These Comments are filed by the City of South Portland in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, South Portland believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Our community also has a cable ordinance which operates in conjunction with the franchise agreement. These documents are collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

South Portland is a City with a population of 23,324. Our franchised cable provider is Time Warner Cable of Maine, (hereinafter referred to as "the Company"). Our community has negotiated cable franchises since 1974.

Our Current Franchise

Our current franchise began on July 1, 1995 and expires on June 30, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public and government access and 1 channel devoted to educational access. A third channel is used as a regional public access channel that is seen by 14 towns on this Time Warner System. Also, the government access channel from the City of Portland can be connected as an alternate source of programming on our channels. In addition, our franchise requires four activated return paths from different locations within the City to be able to cablecast programming from those locations.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: An initial capital grant of \$109,000 plus equipment valued at \$45,000 was agreed upon by both parties. In addition, the Company agreed to a \$25,000.00 capital grant in year ten of the franchise.

Our franchise contains the following institutional network ("I-Net") requirements: A total of 30 municipal buildings and water treatment pump stations are required to be "served with two way cable data connections." We use our I-Net facilities in the following ways: Municipal financial data, school records data, interoffice communications, water treatment flow data and video monitoring for traffic control and security are some of the information that is passing through this network.

Our franchise contains the following requirements regarding emergency alerts: "In case of an emergency or a disaster, the Company shall, upon request, of the City, make available its facilities to the City for emergency use during the emergency or disaster period." In addition, a separate audio & video link from our emergency operations center in the Public Safety Building is available 24/7 to enable our municipal officials the ability to communicate with cable subscribers on the Public/Government channel. Also, the Company conducts regular tests of the emergency broadcast system on designated channels. These emergency alert requirements and live video feed provide an important avenue of communication with our residents in the event of an emergency. Examples of this capability are as follows: When a tanker truck overturned on one of our main roads, we were able to place a scrolling announcement on our local channels advising people not to travel in that direction. We have also have the ability to use the live A/V feed to advice subscribers when the city is conducting emergency exercises in support of homeland security objectives.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The Company is required to provide a pro-rata credit on the following month's service charge for any service interruption longer than 24 consecutive hours after notification by the subscriber. The company also has to provide reasonable notice for any planned service interruptions for making repairs, adjustments or installations. Safety and service requirements are required to be in accordance with the best accepted standards of the industry, and in compliance with all Federal and State laws. Time Warner must maintain a location within the City of South Portland for accepting payments and receiving complaints. Time Warner also must notify new customers of the complaint procedure and expeditiously investigate and resolve any complaints that it receives. In addition, the City has adopted procedures for resolving any issues with Time Warner that the customer cannot.

Our original franchise contains the following reasonable build schedule for the cable operator: "System construction will be completed within a two year period after the commencement of construction, however the Company will make every effort to complete the project in 18 months, barring unforeseen circumstances beyond the control of the Company."

-First franchise with Public Cable Company, 1974. Universal service of our City is required by our franchise.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Our current franchise required a system upgrade to 60 channel capacity in 1994 under the following terms: "Planning for the upgrade shall commence immediately and construction shall begin not more than ninety (90) days after this Franchise become effective. The upgraded system shall be in operation in a significant portion (constituting over 50% of its existing subscriber base) of the city within twelve (12) months after the commencement of construction. At the end of twenty-four (24) months from commencement, the upgrade will be completed as set forth.." If for reasons beyond the control of the Company it cannot comply with this schedule, the City shall from time to time and for good cause shown, extend the period for the commencement of construction or service or both for periods not exceeding one (1) year at any one time. The system has since been upgraded with fiber replacing all coaxial cables except for individual subscriber drops. This upgrade was initiated by The Company and included an upgrade of the City I-Net at no charge to the City. Cable modem and digital phone services are also available to all of The Company's subscribers.

All Franchises in the State of Maine must be non-exclusive by State Law and any entity that meets the requirements of our CATV Ordinance may apply for a

Franchise in our community. In addition “If the City grants a cable franchise to anyone other than the Company, to the extent that the franchise is in whole or in part inconsistent with such other cable franchise, then, at the Company’s option, the Company’s franchise shall be automatically amended or conformed in whole or in part at the Company’s sole discretion, as the case may be so that it is no less favorable than the most favorable franchise granted to any other entity.”

Our franchise contains the following insurance and bonding requirements: “A performance bond of \$200,000.00 running to the City conditioned upon the faithful performance of the upgrade of the system as described herein” is required of the Company. In addition, the Company has to maintain liability insurance for the City and the Company in the minimum amounts of \$300,000.00 for bodily injury or death to any one person within the limit, or a maximum of \$500,000.00 for bodily injuries of death resulting from any one accident. Also required is insurance in the amount of \$300,000 for property damage resulting from any one accident.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from our municipal offices before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: “If The Company shall fail to comply with any of the provisions of this grant or shall default in any of its undertakings or obligations hereunder and shall fail within sixty (60) days after receipt of written notice from the City to correct such default or non-compliance, then the City shall have the right, after a full and complete hearing, to revoke any or all rights and privileges granted hereunder provided, however, that default or non-compliance resulting from factors beyond the reasonable control of The Company shall not be sufficient grounds for revocation.”

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: "Section 22. Modification by reason of statutes and government regulations: If at any time, any section of this agreement conflicts with operation under or compliance with any federal or state statutes or with regulations of the Federal Communications Commission, or any other State or Federal agency with regulatory power over The Company as it is operated, said sections shall, at that time, be altered so as to conform with said statute or regulation. The remainder of the agreement shall not be changed except as necessary to comply with the above.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Matters of subscriber complaints or non-performance by The Company may be sent to the City Manager and if not resolved, then to the CATV Regulatory Board through the public process. All meetings are given public notice and the cable operator is given ample time to correct the deficiency see "enforcement mechanisms" above. Also the City has adopted a CATV Franchising Ordinance that outlines the requirements of the City and the Company regarding the franchise process.

Competitive Cable Systems

Our community was approached once in May of 2000, but the provider chose not to enter into any formal discussions.

Conclusions

The local cable franchising process functions well in South Portland. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of South Portland therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of South Portland, Maine

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